

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VALERY LATOUCHE

Plaintiff,

-against-

Doc # 7:23-Cv-02207-PMH

Motion/Declaration for default in this action

LIEUTENANT BRIAN J. BODGE,
OF SING SING CORRECTIONAL FACILITY
ELAINE VELEZ, DEPT. SUPT. OF PROGRAMS
OF SING SING CORRECTIONAL FACILITY

Defendants.


Plaintiffs move this court for a judgment by default in this action, and show that the complaint in the above case was filed in this court on the 15th day of March 2023, the summons on and complaint were duly served on defendant, **Lieutenant Brian J. Bodge, Of Sing Sing Correctional Facility and Elaine Velez, Dept. Supt. Of Programs Of Sing Sing Correctional**

Application denied without prejudice. The application is premature because there is no evidence on the docket that Defendants have been served. As stated in the Order of Service (Doc. 6), if the Complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

The time to serve Defendants expired on June 27, 2023. The Court hereby *sua sponte* extends the time to serve to August 2, 2023. If the Complaint is not served by that date, Plaintiff should request an extension of time for service.

The Clerk of Court is respectfully requested to: (1) terminate the motion sequence pending at Doc. 10; and (2) mail to Plaintiff a copy of this Order.

SO ORDERED.


Philip M. Halpern
United States District Judge

Dated: White Plains, New York
July 5, 2023

other defense has been filed by the defendant since the default was entered: at or incompetent as appears in the

for a judgment that defendant defaulted

Respectfully


Valery LaTouche 05-A-5812
Ossining, New York 10562

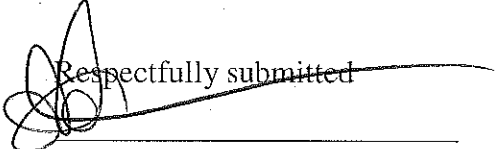
Valery LaTouche 05-A-5812
354 Hunter Street
Ossining, New York 10562
May 29, 2023

Clerk of the court
United States District Court
Southern District of New York
Daniel Patrick Moynihan United State Courthouse
500 Pearl Street,
New York NY 10007-1312

RE: LaTouche v Lieutenant Bodge et al Doc # 7:23-Cv-02207-PMH

To clerk of the court:

Pursuant to the motion/declaration for entry of default judgment attached, defendant John Morley, Chief Medical Officer Department of Correctional Services having failed to answer or otherwise appear in the above entitled action and the time for appearance having expired, defendant did not provide an answer to the action and no proceeding has been held in this court to absorb defendant of its duty or to extend time to answer. Defendant's default having been entered on 19th day of April 2023, You are requested to enter defendant **Lieutenant Brian J. Bodge, Of Sing Sing Correctional Facility and Elaine Velez, Dept. Supt. Of Programs Of Sing Sing Correctional Facility** default pursuant to Fed. R. Civ P. 55(a)

 Respectfully submitted

Valery LaTouche 05-A-5812
Ossining, New York 10562

Enclosed: Complaint and Docket sheet

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
VALERY LATOUCHE (Pro-Se)

Plaintiff,

SUMMONS

-against-

**Civil Action Pursuant to
Title 42 U.S.C.A. § 1983**

LIEUTENANT BRIAN J. BODGE,
OF SING SING CORRECTIONAL FACILITY
ELAINE VELEZ, DEPT. SUPT. OF PROGRAMS
OF SING SING CORRECTIONAL FACILITY

Defendants.

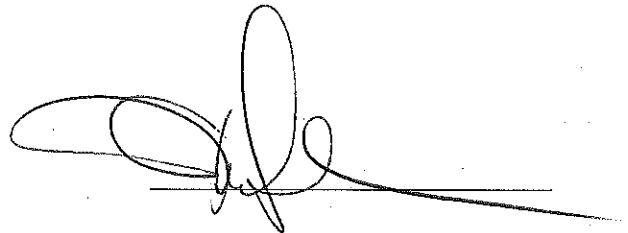
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TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned, and required to serve upon plaintiff (at the address below) an answer to the complaint in this action within twenty (21) days after service of this Summons, exclusive of the day of services, or within thirty (60) days after service is completed if the summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: _____

Ossining, New York 10562



Valery LaTouche
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
VALERY LATOUCHE (Pro-Se)

Plaintiff,

-against-

**COMPLAINT PURSUANT
TO 42 U.S.C. § 1983**

7:23-cv-02207 (PMH)

LIEUTENANT BRIAN J. BODGE,
OF SING SING CORRECTIONAL FACILITY
ELAINE VELEZ, DEPT. SUPT. OF PROGRAMS
OF SING SING CORRECTIONAL FACILITY

Defendants.
-----X

COMPLAINT

I. PRELIMINARY INTRODUCTION

1. Plaintiff in the above-caption action allege (s) as follows:
2. Plaintiff, Valery LaTouche, brings this action seeking relief and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983, against New York State Department of Corrections and Community Supervision (hereinafter, NYS DOCCS), employees, executive and administrative staff, Correctional Officers and Correctional Supervisors, at Sing-Sing Correctional Facility for money damages brought pursuant to 42 U.S.C. § 1983, to redress the deprivation of rights secured to plaintiff by the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution in their individual and official capacity.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1341 (a)(3), 1341 (a)(4), 1367(a) and 42 U.S.C. § 1983.

VENUE

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391.
5. It is alleged that the individual employees, Executive and Administrative staff members, Correctional Officers, Correctional Supervisors, Department at the NYS DOCCS retaliated, deprived and violated plaintiff's liberty interest and first amendment right to Free Speech, equal protection of the law, and Fourteenth amendment right to due process

II. PARTIES IN THE COMPLAINT:

6. Plaintiff is and was at all times relevant herein a citizen of the United States and resides at:

- a. Valery LaTouche
Sing-Sing Correctional Facility
354 Hunter Street
Ossining, N.Y. 10562

- b. **Defendant Number One:**
Mr. Brian J. Bodge, Corr. Lieutenant
Sing Sing C.F.
354 Hunter Street
Ossining, N.Y. 10562

Defendant Number Two:
Ms. Elaine Velez
Sing-Sing C.F.
354 Hunter Street
Ossining, N.Y. 10562

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES:

7. There is a grievance procedure at Sings-Sing Correctional Facility
8. All grievances in relation to the matters alleged herein were filed, appealed and exhausted (**See, attached Exhibit A**).

IV. PREVIOUS LAW SUITS:

- 9-a Valery LaTouche v Tompkins et al
Southern District of New York
Hon. Randolph F. Treece,
9:09-CV-308 (NAM/RFT)
Settled out of court.

- b. Valery LaTouche v Rockland County District attorney et al
Southern District of New York
15 CV 8325 (LAP)
Dismissed

- c. Valery LaTouche v Rockland County, et al
Southern District of New York
22-CV-01437(CS)
Pending

V. STATEMENT OF CLAIM:

9. Plaintiff, Valery LaTouche (Pro-Se), brings this action claiming that defendants violated and failed to comply with State and Federal regulations at the NYS DOCCS by retaliating against him in violation of his right to Free Speech, equal protection of the law and due process violation committed retaliatory and discriminating practice, in violation of his First, and Fourteenth Amendments to the United States Constitution: 42 U.S.C. § 1983.
10. The NYS DOCCS institution giving rise to all of plaintiff's claims alleged herein occurred at Sing-Sing Correctional facility, located at 354 Hunter Street, Ossining, New York, 10562.
11. The Defendant Lieutenant Brian J. Bodge, lieutenant at Sing Sing Correctional Facility at all times is the supervisor of Sing Sing staff and staff were acting under her authority and instructions, including but not limited to defendants
12. The Defendant, *Mrs. Elaine Velez*, the Deputy Superintendent of Programs at Sing-Sing Correctional facility at all times was the supervisor of the Program department and programming staff were acting under her authority and instructions, including but not limited to defendants:

BACKGROUND

13. On May 14, 2022, during the time of Coronavirus Elaine Velez approached the plaintiff asking about his face mask. Plaintiff informed her that he had it in his pocket because and will put it on right now while walking away. Later that day, Plaintiff was informed by HBA correction staff per Dep Velez he is ban from the law library. Plaintiff continued to have and participate in his program. By operation of State and Federal Laws, plaintiff's movement is controlled by the NYS DOCCS, From June of 1999 until present, plaintiff has been incarcerated in the custody of the NYS DOCCS. All defendants are sued in their individual and official capacity.

FACTS:

14. Plaintiff, Valery LaTouche, residing at Sing-Sing Correctional Facility, NYS DOCCS, has been an Incarcerated individual at Sing Sing Correctional Facility for approximately thirteen

years and during six year of the thirteen plaintiffs had a program at law library. Plaintiff is also a student of Mercy College and Hudson link program was on the evening of November 23, 2022, in the schooling building. Plaintiff was in room 107 with another incarcerated individual when he was accosted and accused by Lt. Bodge of smoking Marijuana, due to the odor being heavily in the air. Plaintiff explained that he was in the school building was in the area because the Hudson link lab room was close due to thanksgiving and while being interrogated Lt. Bodge directly told that he will come after plaintiff schooling, basically he wants to remove him from Mercy College, Hudson Link program.

15. Two days after the incident plaintiff was submitted for urinalysis and the result of the preliminary test was positive and the confirmatory test was negative. Plaintiff was never issued any misbehavior report and was not found to be positive for marijuana or any drug use. On November 11, 2022, Plaintiff filed a grievance against Lt. Bodge and after a response was requested for the grievance plaintiff was immediately removed from his law library program per Lt. Bodge's request on his assumptions that plaintiff was smoking weeding in the school facility and the removal was agreed to by Dep Velez on the grounds that as of May 14, 2022 plaintiff was issued a misbehavior for calling her a "bum bitch" Plaintiff grieved the matter and the committee agreed with him and his appeal was denied by the superintendent appeal submitted the superintendent denial to Central officer Review Committed and have not received any responses.

FIRST CAUSE OF ACTION

DEFENDANT LIEUTENANT BRIAN J. BODGE,
RETALIATED AGAINST PLAINTIFF IN
VIOLATION OF HIS RIGHT TO FREEDOM OF
SPEECH.

Paragraphs 1-through-16 is incorporated herein by reference as though fully set forth.

16. In the instant case Lieutenant Brian J. Bodge retaliated against plaintiff for writing a grievance towards him for his threats he made on the evening of November 23, 2022. Plaintiff program as a law library clerk was taken away from him immediately after the grievance was filed. Plaintiff has a protected right to grievance and Lt. Bodge conduct constitute retaliation, *Mateo v Fischer*, 682 F.Supp.2d 423 (S.D.N.Y.2010)

SECOND CAUSE OF ACTION

Paragraphs 1-through-117 is incorporated herein by reference as though fully set forth.

17. Lieutenant Brian J. Bodge and Deputy Superintendent of Programs Elaine Velez violated Plaintiff's due process right and liberty interest as a result of removing plaintiff from his program in violation of directive **4083 (XI)(b) (3) Amend XIV § 1**

RELIEF

18. All of the above defendants are sued in their individual and official capacity.

19. Plaintiff demands: **A TRIAL BY JURY.**

20. Wherefore, plaintiff prays that this Court grant the following relief:

- a. Two Million (2,000,000.00) dollars in Compensatory Damages; and,
- b. Two Million (2,000,000.00) dollars in Punitive Damages
- c. Three Million (3,000,000.00) for violation of plaintiff constitutional rights
- d. A total of 7 Million (7,000,000.00) requested relief.

21. I, Valery LaTouche 05-A-5812 declare under the penalty of perjury that the foregoing is true and correct.

Dated: _____, 2023

Respectfully Submitted,

Valery LaTouche 05-A-5812 Plaintiff, Pro-Se

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ECF,PRO-SE

U.S. District Court
Southern District of New York (White Plains)
CIVIL DOCKET FOR CASE #: 7:23-cv-02207-PMH

LaTouche v. Bodge et al
Assigned to: Judge Philip M. Halpern
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 03/14/2023
Jury Demand: None
Nature of Suit: 555 Prisoner: Prison
Condition
Jurisdiction: Federal Question

Plaintiff**Valery LaTouche**

represented by **Valery LaTouche**
05A5812
Sing-Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562
PRO SE

V.

Defendant

Lieutenant Brian J. Bodge
of Sing Sing Correctional Facility

Defendant

Elaine Velez
*Supt. of Programs of Sing Sng Correctional
Facility*

| Date Filed | # | Docket Text |
|------------|----------|--|
| 03/14/2023 | <u>1</u> | COMPLAINT against Brian J. Bodge, Elaine Velez. Document filed by Valery LaTouche.. (rdz) (Entered: 03/15/2023) |
| 03/14/2023 | | Case Designated ECF. (rdz) (Entered: 03/15/2023) |
| 03/14/2023 | <u>2</u> | REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Valery LaTouche.. (rdz) (Entered: 03/15/2023) |
| 03/14/2023 | <u>3</u> | PRISONER AUTHORIZATION. Document filed by Valery LaTouche..(rdz) (Entered: 03/15/2023) |
| 03/23/2023 | <u>4</u> | ORDER GRANTING IFP APPLICATION IN PRISONER CASE: The Clerk of Court is directed to send a copy of this order and the prisoner authorization to the agency having custody of Plaintiff. That agency is directed to forward copies of Plaintiff's prison trust fund account for the past six months and to disburse the payments required under 28 U.S.C. § 1915 to the United States District Court for the Southern District of New York and to include the above docket number on the disbursement before sending it to the Court. If |

| | | |
|------------|----------|---|
| | | Plaintiff is transferred to another facility, the current facility shall provide a copy of this order to the facility to which Plaintiff is transferred. Finally, it is Plaintiff's obligation to promptly submit a written notification to the Court if Plaintiff's address changes, and the Court may dismiss the action if Plaintiff fails to do so. (Signed by Judge Laura Taylor Swain on 3/23/2023) (vn) (Entered: 03/23/2023) |
| 03/23/2023 | | Mailed a copy of 4 Order Granting IFP Application in Prisoner Case, to Warden/Superintendent of Sing-Sing Correctional Facility 354 Hunter Street Ossining, NY 10562. (dsh) (Entered: 03/23/2023) |
| 03/27/2023 | | NOTICE OF CASE REASSIGNMENT to Judge Philip M. Halpern. Judge Unassigned is no longer assigned to the case. (vba) (Entered: 03/27/2023) |
| 03/27/2023 | | Magistrate Judge Andrew E. Krause is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf . (vba) (Entered: 03/27/2023) |
| 03/28/2023 | <u>6</u> | ORDER OF SERVICE: The Clerk of Court is instructed to issue summonses for Brian Bodge and Elaine Velez, complete USM-285 forms with the addresses for these Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service. The Clerk of Court is further instructed to mail to Plaintiff: (i) an information package; and (ii) a copy of this Order with its attachments. Copies of NYLAG Clinic's flyer, retainer, and intake form are attached to this Order. SO ORDERED. (Signed by Judge Philip M. Halpern on 3/28/2023) (vfr) Transmission to Pro Se Assistants for processing. (Entered: 03/28/2023) |
| 03/29/2023 | <u>7</u> | SUMMONS ISSUED as to Brian J. Bodge, Elaine Velez. (sha) (Entered: 03/29/2023) |
| 03/29/2023 | | FRCP 4 SERVICE PACKAGE HAND DELIVERED TO U.S.M.: on 3/29/2023 Re: Judge Philip M. Halpern <u>6</u> Order of Service. The following document(s) were enclosed in the Service Package: Complaint, Summons, IFP, Order of Service, Completed U.S.M. form(s) for defendant(s) Brian J. Bodge, Elaine Velez. (sha) (Entered: 03/29/2023) |
| 03/29/2023 | <u>8</u> | INFORMATION PACKAGE MAILED to Valery LaTouche, 05A5812, at Sing-Sing Correctional Facility 354 Hunter Street, Ossining, NY 10562, on 3/29/2023 Re: <u>6</u> Order of Service. The following document(s) were enclosed in the Service Package: a copy of the order of service or order to answer and other orders entered to date, the individual practices of the district judge and magistrate judge assigned to your case, Instructions for Litigants Who Do Not Have Attorneys, Notice Regarding Privacy and Public Access to Electronic Case Files, a flyer about the free legal assistance clinic located in the Thurgood Marshall Courthouse, a Motions guide, a notice that the Pro Se Manual has been discontinued, a Notice of Change of Address form to use if your contact information changes, a handout explaining matters handled by magistrate judges and consent form to complete if all parties agree to proceed for all purposes before the magistrate judge. (sha) (Entered: 03/29/2023) |
| 05/17/2023 | <u>9</u> | LETTER from V. LaTouche, dated 5/14/23 re: Please provide me with the status of this case. I would like to know whether the defendants were served with the Complaint. Document filed by Valery LaTouche.(sc) (Entered: 05/17/2023) |
| 05/17/2023 | | Request for Copy of the updated Docket Sheet Received: Re <u>9</u> Letter. Request for Docket Report, from V. LaTouche received on 5/17/23. Transmission to Pro Se Assistants for processing. (sc) (Entered: 05/17/2023) |

| Transaction Receipt | | | |
|---------------------|---------------|------------------|-------------------|
| 05/17/2023 16:15:48 | | | |
| PACER Login: | us5070 | Client Code: | |
| Description: | Docket Report | Search Criteria: | 7:23-cv-02207-PMH |
| Billable Pages: | 2 | Cost: | 0.20 |
| Exempt flag: | Exempt | Exempt reason: | Always |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VALERY LATOUCHE

Plaintiff,

-against-

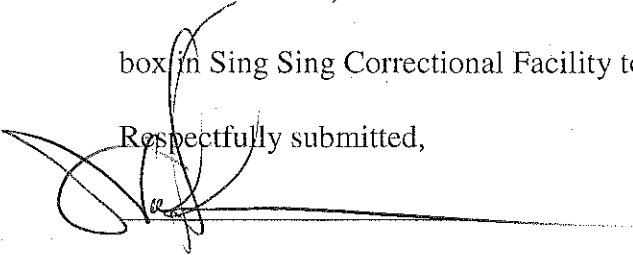
LIEUTENANT BRIAN J. BODGE,
OF SING SING CORRECTIONAL FACILITY
ELAINE VELEZ, DEPT. SUPT. OF PROGRAMS
OF SING SING CORRECTIONAL FACILITY

DECLARATION OF SERVICE
Doc # 7:23-Cv-02207-PMH

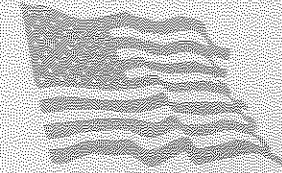
Defendants.

I, Valery LaTouche , declare under the penalty that I have severed a copy of the attached;
Motion/Declaration for default judgment (with complaint) pertaining to the above mention
case Doc# *LaTouche v Lieutenant Bodge et al* Doc # 7:23-Cv-02207-PMH on the 29
day of May, 2023, to the following address(es); Clerk of the court United States
District Court Southern District of New York Daniel Patrick Moynihan United State Courthouse
500 Pearl Street, New York NY 10007-1312 by placing it in a prepaid postage parcel in a mail
box in Sing Sing Correctional Facility to be mailed by the United States Postal Service

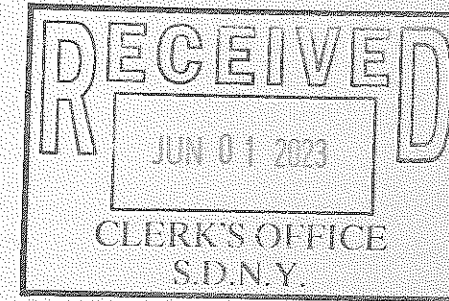
Respectfully submitted,


Valery LaTouche 05-A-5812
Ossining, New York 10562

Valegha Touche OSA 5812
354 Hunter Street
Ossining New York 10562



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05/30/2023
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Attn: Clerk of the Court
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York N.Y. 10007-1312

Pro Se ^{MR}

Legal mail

